IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Reissue Application of Proctor
Reissue Application No. 09/773,303
Filed: 31 January 2001
For: U.S. Patent No. 5,894,079

Group Art Unit: 1638
Examiner: McElwain, Elizabeth F.
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In re Proctor Reexamination Proceeding
Control No. 90/005,892
Filed: December 20, 2000
For: U.S. Patent No. 5,894,079
Title: FIELD BEAN CULTIVAR NAMED ENOLA

Dated: October 14, 2005

DECLARATION OF POLLY A. PROCTOR

1. My name is Polly A. Proctor. My address is P.O. Box 138, 1281 Pinion, Delta, Colorado 81416. I am a Vice President of Pod-Ners L.L.C, the owner of United States Patent No. 5,894,079, the patent involved in these consolidated proceedings. I am the same Polly A. Proctor that signed Declarations in this matter on March 25, 2003 and May 28, 2004.

2. I have been using the Munsell Book of Colors to read colors displayed by bean plants and seeds since at least 1999. Most of my efforts have focused on bean colors, the seed coat and hilar ring in particular. I have read the colors of several thousand bean seeds since 1999. I have been involved in other color matching activities since the early 1970's, when I matched sugar samples to reference samples for Great Western Sugar. In 1984 (and since), I have been involved in a

landscape business that requires matching the colors of plants, flowers, trees shrubs and inanimate objects of various sorts.

3. I have used the Munsell Book of Color because it was one of two references recommended by the Plant Variety Protection Office when we applied for a Plant Variety Protection Certificate for the Enola bean. I understood at the time that the Munsell Book of Color was a widely used tool for color analysis, and I believe that still to be the case. See Attachments 1 and 2. One reference states that the Munsell system is "the simplest and most widely used subjective color system." See Attachment 3.

3. In 2002, I visited the facility of the Munsell Color Services, which is a division of GretagMacBeth, L.L.C. I met with Mr. Luis A. Vega, a Senior Color Technologist with Munsell Color Services. Among other things, we discussed techniques for reading color using the Munsell Book of Color. He confirmed my belief that I was conducting the analysis properly.

4. While I was at Munsell, I took the FM (for Farnsworth-Munsell) 100 Hue Test. Munsell describes the test on its website: " This test gives you an easy-to-administer but highly effective method for measuring any individual's color vision. Used by the government and industry for over 40 years, the test consists of four trays containing a total of 85 removable color reference caps (incremental hue variation) spanning the visible spectrum. Color vision abnormalities and aptitude are detected by the ability of the test subject to place the color caps in order of hue." See Attachment 4 (includes Manual) and http://www.munsell.com/index/products/products_color-standards/products_color-vision-tests/products_fm-100-hue-test.htm.

5. My score on the test was 84 out of 85. Mr. Vega stated that this was a score that would be made by someone qualified to be a professional colorist.

6. One important aspect of Munsell Color measurement is the light conditions under which the reading is taken. Outdoor light has a blue tint in the morning and a reddish tint in the evening. In addition, direct sunlight is too bright to permit readings.

7. My practice is to take my readings between the hours of 10:00 AM and 2:00 PM. I sit in front of a north-facing window. Beyond that, my observations generally follow the procedure found in ASTM D 1535-01, which specifies a standard practice for Munsell Color analysis in daylight by an observer having normal color vision. Attachment 5. I do not follow each and every requirements of the ASTM standard because I have found, after years of involvement in color matching, that a few of them have no effect on the accuracy of my readings (south window - southern hemisphere does not apply; canopy of black cloth has no bearing one way or the other; use of gloss edition does not work well; and #8. on page 3 of the 'Standard' is of no use).

8. Mr. Vega at Munsell told me that Munsell prefers that daylight-based measurements be taken under lightly overcast skies. See also Attachments 4 and 6. In Delta, however, bright days are the norm, and I take my measurements on bright days only to maintain consistency. Mr. Vega had no problem with this.

8. I make my measurements by looking at one object at a time. I am not aware of any color measurement system where two objects are simultaneously compared to a color chart, and that is definitively not the case with the Munsell system. The reference on Attachment 3 to "adjacent samples" is a reference to adjacent Munsell reference color samples, not to samples that one is trying to read.

9. The Examiner asks about the information provided by me on PI 282060, PI 312090 and PI 208777, stating that they could not be evaluated because my first table does not specify whether the colors I read are for the seed coat or the hilar ring. The answer is that they relate to the seed coat.

10. I make these statements under penalty of perjury.

October 14, 2005

Polly A. Proctor